

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 320

Introduced by Assembly Member Hill

February 9, 2011

An act to amend Sections 21108, 21152, and 21167.6.5 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL’S DIGEST

AB 320, as amended, Hill. Environmental quality: California Environmental Quality Act (CEQA): determination: dispute.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, which includes a local agency, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires a lead agency to file a notice of approval or a notice of determination containing specified information with the Office of Planning Research or the county clerk of each county in which the project is located, as appropriate. CEQA provides a procedure by which a party may attack, review, set aside, void, or annul the determination, finding, or decision of a public agency on specified grounds and requires that a petitioner or plaintiff name, as a real party in interest, a recipient of an approval that is the subject of an action or proceeding challenging the determination, finding, or decision of a public agency pursuant to CEQA.

This bill would require that the named recipient be as identified by the public agency in its notice of determination or notice of exemption. The bill would require that a petition or complaint be subject to dismissal

if a petitioner or plaintiff fails to serve any recipient of an approval within the statute of limitations period.

The bill would provide that the above requirement would not apply to a proceeding for judicial review filed pursuant to CEQA that is pending on or before December 31, 2011, or to actions or proceedings challenging an act or decision of a public agency for which a notice of decision or notice of exemption was filed on or before December 31, 2011.

The bill would require a notice of approval or notice of determination to contain the ~~name~~ *names* of the ~~recipient~~ *recipients* of the agency's approval, if any. Because a lead agency would be required to include additional information in the notice of approval or notice of determination, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21108 of the Public Resources Code is
2 amended to read:
3 21108. (a) Whenever a state agency approves or determines
4 to carry out a project that is subject to this division, the state agency
5 shall file notice of that approval or that determination with the
6 Office of Planning and Research. The notice shall name the
7 ~~recipient~~ *recipients* of the agency's approval, if any, and indicate
8 the determination of the state agency whether the project will, or
9 will not, have a significant effect on the environment and shall
10 indicate whether an environmental impact report has been prepared
11 pursuant to this division.
12 (b) Whenever a state agency determines that a project is not
13 subject to this division pursuant to subdivision (b) of Section 21080
14 or Section 21172, and the state agency approves or determines to
15 carry out the project, the state agency or the person specified in
16 subdivision (b) or (c) of Section 21065 may file notice of the
17 determination with the Office of Planning and Research. A notice

1 filed pursuant to this subdivision shall name the ~~recipient~~ *recipients*
2 of the agency's approval, if any. A notice filed pursuant to this
3 subdivision by a person specified in subdivision (b) or (c) of
4 Section 21065 shall have a certificate of determination attached
5 to it issued by the state agency responsible for making the
6 determination that the project is not subject to this division pursuant
7 to subdivision (b) of Section 21080 or pursuant to Section 21172.
8 The certificate of determination may be in the form of a certified
9 copy of an existing document or record of the state agency.

10 (c) All notices filed pursuant to this section shall be available
11 for public inspection, and a list of these notices shall be posted on
12 a weekly basis in the Office of Planning and Research. Each list
13 shall remain posted for a period of 30 days. The Office of Planning
14 and Research shall retain each notice for not less than 12 months.

15 SEC. 2. Section 21152 of the Public Resources Code is
16 amended to read:

17 21152. (a) Whenever a local agency approves or determines
18 to carry out a project that is subject to this division, the local agency
19 shall file notice of the approval or the determination within five
20 working days after the approval or determination becomes final,
21 with the county clerk of each county in which the project will be
22 located. The notice shall name the ~~recipient~~ *recipients* of the
23 agency's approval, if any, and indicate the determination of the
24 local agency whether the project will, or will not, have a significant
25 effect on the environment and shall indicate whether an
26 environmental impact report has been prepared pursuant to this
27 division. The notice shall also include certification that the final
28 environmental impact report, if one was prepared, together with
29 comments and responses, is available to the general public.

30 (b) Whenever a local agency determines that a project is not
31 subject to this division pursuant to subdivision (b) of Section 21080
32 or pursuant to Section 21172, and the local agency approves or
33 determines to carry out the project, the local agency or the person
34 specified in subdivision (b) or (c) of Section 21065 may file a
35 notice of the determination with the county clerk of each county
36 in which the project will be located. A notice filed pursuant to this
37 subdivision shall name the ~~recipient~~ *recipients* of the agency's
38 approval, if any. A notice filed pursuant to this subdivision by a
39 person specified in subdivision (b) or (c) of Section 21065 shall
40 have a certificate of determination attached to it issued by the local

1 agency responsible for making the determination that the project
2 is not subject to this division pursuant to subdivision (b) of Section
3 21080 or Section 21172. The certificate of determination may be
4 in the form of a certified copy of an existing document or record
5 of the local agency.

6 (c) All notices filed pursuant to this section shall be available
7 for public inspection, and shall be posted within 24 hours of receipt
8 in the office of the county clerk. A notice shall remain posted for
9 a period of 30 days. Thereafter, the clerk shall return the notice to
10 the local agency with a notation of the period it was posted. The
11 local agency shall retain the notice for not less than 12 months.

12 SEC. 3. Section 21167.6.5 of the Public Resources Code is
13 amended to read:

14 21167.6.5. (a) The petitioner or plaintiff shall name, as a real
15 party in interest, ~~a recipient~~ *the recipient or recipients* of an
16 approval, as identified by the public agency in its notice of
17 determination or notice of exemption, that is the subject of an
18 action or proceeding brought pursuant to Section 21167, 21168,
19 or 21168.5, and shall serve the petition or complaint on that real
20 party in interest, by personal service, mail, facsimile, or any other
21 method permitted by law, not later than 20 business days following
22 service of the petition or complaint on the public agency.

23 (b) If the petitioner or plaintiff fails to serve ~~a recipient~~ *the*
24 *recipient or recipients* of an approval, identified in the public
25 agency's notice of determination or notice of exemption, within
26 the limitations period specified in subdivision (a), the petition or
27 complaint shall be subject to dismissal on the motion of a party
28 interested in the proceeding.

29 (c) The public agency shall provide the petitioner or plaintiff,
30 not later than 10 business days following service of the petition or
31 complaint on the public agency, with a list of responsible agencies
32 and a public agency having jurisdiction over a natural resource
33 affected by the project.

34 (d) The petitioner or plaintiff shall provide the responsible
35 agencies, and a public agency having jurisdiction over a natural
36 resource affected by the project, with notice of the action or
37 proceeding within 15 days of receipt of the list described in
38 subdivision (c).

39 (e) Failure to name potential persons, other than those real
40 parties in interest described in subdivision (a), as identified by the

1 public agency in its notice of determination or notice of exemption,
2 is not grounds for dismissal pursuant to Section 389 of the Code
3 of Civil Procedure.

4 (f) This section is not intended to affect an existing right of a
5 party to intervene in the action.

6 SEC. 4. Section 21167.6.5 of the Public Resources Code as
7 amended by this act does not apply to a proceeding for judicial
8 review filed pursuant to Chapter 6 (commencing with Section
9 21165) of Division 13 of the Public Resources Code that is pending
10 on or before December 31, 2011, or to an action or proceeding
11 that seeks to attack, review, void, or set aside an act or decision
12 of a public agency for which a notice of determination or notice
13 of exemption was filed on or before December 31, 2011, and the
14 applicable law in effect on that date shall continue to apply to that
15 proceeding.

16 SEC. 5. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.